COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 164 of 2004

Oriental Insurance Co. Ltd. …. **Appellant.**

Versus

Smt. Munni Kashyap
and others. ……**Respondents.**

Coram: Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 10-4-2004 passed in M.A.C. Case No. 199 of 2000, Smt. Munni Kashyap & o thers Vs. Sri Manjeet Singh & another, by Motor Accident Claims Tribunal/Add. District Judge, I F.T.C. Nainital ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.2,83,000/- as compensation along with interest @ 7% per annum, as mentioned in the impugned order, in favour of the claimant-respondent Nos. 1 to 4 against the O.P. No.2-appellant under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that in the accident in question the vehicle No. UP-02-D-2609 was not involved and that the quantum of award is exorbitant and the Tribunal has failed to appreciate the evidence on record.

Brief fact of the case are that Raja Ram ***(the deceased)*** has died as a re3sult of injuries sustained by him in a motor accident on 7-4-2000 at 6.25 a.m. due to rash and negligent driving by the driver of offending car No. UP 02 D-2609. Hence the claim has been preferred by his legal heirs/dependents. The O.P. NO.1, owner of the vehicle, filed his written statement and has denied the involvement of his vehicle in the motor accident. It has been stated

that the vehicle was duly insured with the appellant-insurance company Insurance Company (O.P.No.2) also filed its written statement and has admitted the insurance of the aforesaid car. The learned Tribunal has framed as many as five Issues in the case. Ultimately, the Tribunal has come to the conclusion that the motor accident resulting into grievous injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of offending car no. UP-02D-2609. It has also been held that the vehicle involved in the accident was duly insured with the appellant-Insurance Company and there was no breach of policy conditions. Finally, the learned Tribunal has awarded compensation of Rs. 2,83,000/- along with interest @ 7% per annum in favour of the claimants as against the appellant-Insurance Company, as mentioned in the impugned order.

We have heard learned counsel for the appellant, Mr. D.S.Patni, and have gone through the entire material on record including the impugned judgment and award.

It has been submitted on behalf of the appellant that in the present case Car No. UP-02D-2609 was not at all involved in the motor accident, therefore, the findings of the learned Tribunal are perverse and against the evidence on record. On this point, the stand of the appellant is based on the F.I.R. lodged in the present case in which number of the offending vehicle has been mentioned as UP 02C-2906. We have carefully perused the entire material on record on this score. There is evidence of P.W.3 Prakash Kashyap, who is the scribe of the written/typed F.I.R. This witness has explained the mistake satisfactorily. The written F.I.R. was got typed but due to inadvertence the number of the car has been wrongly mentioned. The most importance circumstance which goes against the appellant is that D.W.1, Manjeet Singh, who is owner of the vehicle involved in the accident, has appeared in the witness box and has admitted that his car was seized by the police. For which release order was obtained from the court of the magistrate. This witness could not

say that his car was taken into custody by the police otherwise than the alleged motor accident, rather he has admitted that the car was seized by the police in connection with the present motor accident. The driver of the car involved in the accident could be the best witness to support the contention of the appellant, but he has not been produced as a witness in the case. The learned counsel could not show any iota of evidence on record, which could lead us to hold that the motor accident was result of involvement of any other vehicle. The contention of the learned counsel for the appellant is without any basis. The Tribunal has rightly held that the accident in question was caused due to rash and negligent driving by the driver of the car involved in the accident.

So far as the contention of the learned counsel challenging the findings on the quantum of compensation is concerned, it is not open to the Insurance Company to take this stand by filing the appeal, unless thee is permission of the Tribunal under Section 170(b) of the Act. In the present case, the owner of the vehicle has filed his written statement to contest the case and has participated in the proceedings till conclusion of the case. It is not a case of collusion between the claimants and the owner of the vehicle. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002)*** 7, ***Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible of ran insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in (2002)7, S.C.C.456 (supra), which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

In the result, the appeal is devoid of any merit and must fail.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

(B .S.Verma, J.) **(P.C. Verma, J.)**

01-09-2004
RCP